



State of Georgia

Douglas J. MacSinnitie  
Commissioner

**Department of Revenue**  
Legal Affairs & Tax Policy  
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Frank M. O'Connell  
Director

December 19, 2014

[REDACTED]

Re: An Intangible Recording Tax Protest and Claim for Refund per O.C.G.A. § 48-6-76(c) in the amount of [REDACTED] paid upon recording a security instrument with the Clerk of Superior Court, [REDACTED] on October 23, 2014. Parties are [REDACTED] (Grantor); [REDACTED] as Administrative Agent on behalf of, collectively, the Lenders (Grantee)

Dear [REDACTED]

I have carefully considered your Protest and Claim for Refund of intangible recording tax per O.C.G.A. § 48-6-76(c) pursuant to the above-captioned matter. Your Protest and Claim for Refund plus all associated documents were considered in the review. It is my determination based on your request and accompanying documentation that your Claim for Refund in the amount of [REDACTED] is denied. The amount may not be refunded.

O.C.G.A. § 48-6-60 Definitions, at (1), (2) and (3), defines a "Collecting officer," an "Instrument," or "security instrument," and a "Long-term note secured by real estate," respectively. O.C.G.A. § 48-6-61 provides, in pertinent part, that security instruments must be filed and the intangible recording tax paid no later than ninety days from the date of execution by the parties. The tax is imposed on each instrument at a rate of \$1.50 per \$500.00 or fraction thereof of the face amount of the note secured by the instrument.

O.C.G.A. § 48-6-69(a) concerns recording an instrument that is secured by Georgia real property in more than one county (a.k.a. "a multi-county instrument"). Per a change to the statute that became effective July 1, 2010, the filing-recording party is required to make a separate payment to each county (" . . . shall be disclosed on the face of the instrument or, alternatively, may be submitted in the form of an affidavit by the holder presenting the instrument for recording.") for that portion of the tax which is due and allocable to them.

Ga. Comp. R. & Regs. r. 560-11-8-.08 Multi-County Property, at (1), says: "With respect to any instrument given as security for a long-term note wherein the real property is located in more than one county, the intangible recording tax shall be paid to each county in which the instrument is recorded. The value of the real property located in each county must be certified under oath by the holder of the note presenting the instrument for recording."

The [REDACTED] instrument recorded under Protest meets the definition of a security instrument and a long-term note secured by real estate pursuant to O.C.G.A. § 48-6-60(2) and (3). Given that it creates a long-term lien or encumbrance on Georgia real property, with the identical parties having already executed a prior instrument in [REDACTED], both of which are part of the same loan transaction, the [REDACTED] instrument should have properly been presented for recording in conformance with O.C.G.A. § 48-6-69 and Rev. Reg. 560-11-8-.08.

Notwithstanding the accompanying "legend" on the face page of the instrument citing a prior recording in [REDACTED] which states the [REDACTED] instrument is exempt from intangible tax pursuant to 560-11-8-.14(c), that position is without legal foundation. The Protest and Claim for Refund must therefore be denied.

A copy of this determination is being provided to the Clerk of Superior Court, [REDACTED] so that the money collected and deposited into an escrow account per O.C.G.A. § 48-6-76(b) may be distributed according to law.

Please be advised that any taxpayer whose Protest and Claim for Refund is denied, in whole or in part, has the right to bring an action for refund of the amount so claimed and not approved against the collecting officer who received the payment and recorded the instrument. The action may be filed in either the Superior Court of the county in which the instrument was recorded or in the Georgia Tax Tribunal no later than 60 days from the date of the denial, and served pursuant to law.

Sincerely,



Frank M. O'Connell

FOC/RJL/me

cc: Clerk of Superior Court, [REDACTED]